

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7804 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? :

ARVINDBHAI PRABHUDAS PAREKH

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner
Mr S K Patel, AGP for Respondent No. 1, 4
MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/09/2000

ORAL JUDGEMENT

The petitioner has filed the present petition under Article 226 read with Articles 21 and 22 of the Constitution of India challenging the order of detention

dated 18.6.2000 passed by the District Magistrate, Amreli in exercise of powers conferred on him under section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. It has been contended here that the petitioner had made representation dated 30.6.2000 which was rejected by the District Magistrate, Amreli on ...July, 2000 (date is blank) as per page 29. The petitioner further contends that once the detention order was passed and when it was approved by the State of Gujarat, then the District Magistrate had no authority or power to revoke the order and therefore, he could not consider the said representation and, therefore, it was his duty to forward the said representation to the State Government for appropriate consideration. That instead of so doing, the District Magistrate himself entertained the representation and rejected the same. That therefore, the said representation could not be considered by the State Government and the valuable right of the petitioner on being considered by the State Government has been lost and, therefore, the impugned detention order is illegal.

3. On receiving the petition, rule was issued. Mr S K Patel, learned APP appears for the State. I have heard the learned Advocates for the parties and have perused the papers.

4. It has been contended on behalf of the petitioner that the order of detention dated 18.6.2000 was approved by the State on 27.6.2000. Thereafter, on 30.6.2000, the petitioner submitted representation against the detention and the District Magistrate rejected the said representation on th July, 2000 as per page 29. This fact cannot be disputed as it is evident from the records made available to the court. It is, therefore, clear that the detention order was passed on 18.6.2000 and it was approved by the State Government on 27.6.2000. Thereafter the representation was made on 30.6.2000. It is very clear that law does not empower the District Magistrate to revoke the order once it is approved by the State. Therefore, the District Magistrate was not required to consider the representation hence it was the duty of the District Magistrate to forward the representation to the State for consideration. This has not been done. Therefore, the petitioner's right of being considered by the State Government has been lost.

5. Similar situation had arisen in the case of Salim Pothiyu R Belia v. District Magistrate, District Mehsana

& ors., reported in 1994 GLH (UJ) 23 before the Division Bench of this Court. There the proposal of detention was moved on 27.6.1993 and detention order was served upon the petitioner on 2.12.1993. The order of detention was approved by the State Government on 23.9.1993. The Advisory Board disposed of the matter on 6.1.1994. The State Government confirmed the order of detention on 15.1.1994. The petitioner made representation against his detention on 3.2.1994 and addressed the same to the District Magistrate who rejected the same on 5.2.1994.

6. Relying on a decision in the case of Navalshankar Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496, it was held that the detaining authority was left with no power to consider and to reject any representation received from the detenu against his detention even if it is addressed to the detaining authority and the detaining authority had to pass on the representation to the State Government for its consideration. That in that case, it was not in dispute that the petitioner's representation made after the State had confirmed the detention, was not forwarded to the State Government for its consideration on its merits. Such inaction on the part of the District Magistrate, District Mehsana vitiated the continued detention of the petitioner. The facts of the said case are identical with the facts of the present case. Here also, the District Magistrate has rejected the representation of the petitioner when the State Government had already approved the detention of the petitioner. Therefore, the right of the petitioner of being considered by the State Government is lost. In that view of the matter, the inaction on the part of the District Magistrate would render the further detention of the petitioner illegal in terms of the above said decisions.

7. In view of the aforesaid, the order of detention cannot be sustained and it has to be quashed. The petition is, therefore, allowed. The order of detention of the petitioner passed on 18.6.2000 by the District Magistrate, Amreli is ordered to be quashed and set aside. The detenu is directed to be set at liberty forthwith if not required in any other case.

Rule is made absolute accordingly. No order as to costs.

14.9.2000 [D P Buch, J.]

msp